

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 500 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JITENDRA BABULAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MRS MADHUBEN SHARMA for Petitioner
Mr S J Patel, APP for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 18/08/98

ORAL JUDGEMENT

Heard the learned Advocates for the parties.

The petitioner was convicted for offence under section 376 of I.P.C. and awarded sentence of 7 years Rigorous Imprisonment by the judgment dated 21.10.1997 passed by the Sessions Judge, Ahmedabad. He was granted parole by the order of the jail authorities on 27.3.1998 for a period of 20 days. However, he was arrested on the same day in connection with Criminal Case No.II 40/98, 122 C (3), and Criminal Case No.II 39/98, IPC 506(2). He was produced before the learned Magistrate, who granted him bail. However, he was taken to jail and he was not allowed to enjoy parole granted by order dated 27.3.1998.

2. It is contended by the learned Advocate for the petitioner that his confinement in jail during the period parole granted by the competent authority is ex-facie illegal as he could be brought in jail only after the order of cancellation of parole under the provisions of section 27(2) of the Bombay Parole, Furlough Rules, 1959.

3. An affidavit has been filed by N G Bariya, Senior Jailor, Central Jail, Sabarmati, Ahmedabad. After giving all the details referred to above, he has stated that as the petitioner has committed breach of conditions of the Bombay Parole, Furlough Rules, 1959, after hearing the jail khatla, the Deputy Superintendent, Ahmedabad Central Prison forfeited the parole deposit and remission of ten days of the petitioner.

4. I have considered the rival contentions of the parties. The learned AGP has failed to produce any order whereby the order of parole was cancelled. The contention of the learned AGP is that as the petitioner had committed breach of conditions of the Bombay Parole, Furlough Rules, the order granting parole stands cancelled. In my view, the contention of the learned AGP is not sustainable. Once the parole has been granted, it can be revoked only in accordance with the provisions of Rule 27 (2) of the Bombay Parole, Furlough Rules and other allied provisions. It was incumbent on the jail authorities to consider the registration of the alleged police cases and on being satisfied, to pass appropriate order under the provisions of Section 27(2) of the Rules. The possibility of false implication with a view to deprive the prisoner of the benefit of parole, cannot be ruled out. In such circumstances, it is the duty of the jail authorities to enquire into the matter and on being satisfied that there is breach of conditions of the Bombay Parole, Furlough Rules, appropriate order can be passed. In the present case, that procedure was not followed. The learned AGP relies on the khatala proceedings. These proceedings cannot be confused with the proceedings for cancellation of parole. Even without cancellation of parole, the said proceedings can be undertaken when the prisoner returns after the parole leave. Thus, in my view, the prisoner was wrongly deprived of taking the medical treatment for which he was granted parole.

5. In view of the aforesaid, this Special Criminal Application is allowed and the respondent is directed that if the petitioner applies for fresh parole, the same

shall be considered in accordance with law. Rule made absolute to the aforesaid extent. It will be open for the petitioner to apply for setting aside the order of punishment awarded under the Prisons Act. If such an application is made, the same shall be decided without any prejudice.

Date: 18.8.98 [N N Mathur, J]

msp.